IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

RCRev..No. 297 of 2007

RCA.10/2006 of DIST. & SESSIONS COURT,KOZHIKODE
RCP.28/2003 of PRL. MUNSIFF'S COURT, KOZHIKODE-I
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PETITIONER(RESPONDENT IN THE R.C.P. AND APPELLANT

C.T.KURIAN, S/O.CHERUVATHI THAVU,
AGED 72 YEARS, CHERUVATHAI HOUSE, JAIL ROAD,
KASABA AMSOM AND DESOM OF KOZHIKODE TALUK.

BY ADV. SRI.P.N.RAVINDRAN
SMT.PREETHY KARUNAKARAN
SMT.M.M.DEEPA
SRI.JAYKAR.K.S.

RESPONDENTS: (PETITIONERS IN THE R.C.P. AND RESPONDENTS IN RCA
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1. K.BAIJUNATH, AGED 43 YEARS,
S/O.HARIDASAN.

2. K.BINSINATH, AGED 37 YEARS,
S/O.HARIDASAN.

3. K.ANOOPKUMAR, AGED 36 YEARS,
S/O.HARIDASAN.

4. K.VINOOPKUMAR, AGED 35 YEARS,
S/O.HARIDASAN,
(ALL THE RESPONDENTS ARE RESIDING AT KARUPPALLI HOUSE, KECHERI AMSOM, KURUMBRAKATTASSERI DESOM, KOZHIKODE TALUK).

BY ADV. SRI. K.M.FIROZ - R1 TO R3

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 12/09/2007 ALONG WITH R.C.R NO. 298/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.BALAKRISHNAN NAIR &

T.R.RAMACHANDRAN NAIR, JJ.

R.C.R. NOS. 297 & 298/2007

Dated 12th September, 2007.

ORDER

Balakrishnan Nair, J.

The tenant and landlords in both the cases are the same. R.C.R No.297/07 arises out of R.C.A. No.10/2006, affirming the decision of the Rent Controller in R.C.P. No.28/2003. R.C.R. No.298/2007 is directed against the judgment in R.C.A.No.9/2006, affirming the order of the Rent Controller in R.C.P.No.9/2003. Both the Rent Control Petitions were disposed of by a common order and the appeals were also disposed by a common judgment. Therefore, we are also hearing and disposing of these Rent Control Revisions by this common order.

R.C.R.No.297/2007:

2. The landlords moved the R.C.P under Sections 11(2)(b), 11(3) and 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as "the Act"). The tenant is in occupation of Room No.10/644, which is in the ground floor of a large building. The tenant is

running a business there. The 2nd respondent herein, who is one of the landlords, wanted the room for running a consultancy business in civil engineering. Presently, he is running the business from his residence. He would like to shift it to the tenanted room bearing No.10/644. It is also urged that the tenant is having another room in the neighbourhood, in which he is running a business. So, eviction was sought under 11(4)(iii) also. The Rent Controller upheld the claim under Sections 11(2)(b), 11(3) and 11 (4)(iii) of the Act. The tenant appealed. In the appeal, the appellant mainly attacked the findings under Sections 11(3) and 11(4)(iii). But, based on the evidence on record, the appellate authority also found that the need of the 2nd respondent herein for a room to run his business is bona fide. It was also found that the tenant is running a business in the neighbourhood. So, the claim under Section 11(4)(iii) was also affirmed by the appellate authority. The learned counsel for the revision petitioner submitted that those findings are illegal, improper and irregular. According to him, the finding under Section 11(3) is unsustainable, as the landlords are in possession of a portion of the upstair building. Now, the 3rd respondent herein is running a D.T.P business there. The civil engineering consultancy business can also be accommodated in that room. But, if the landlords feel that a more convenient and spacious room is required, the same cannot be described as

not a bona fide requirement. So, the said contention of the learned counsel for the revision petitioner cannot be accepted. We are of the view that the said finding is essentially a finding of fact, with which we cannot interfere under Section 20 of the Act. The same is the case with the finding under Section 11(4)(iii). There is evidence on record that the tenant is in possession of a building in the neighbourhood. Accordingly, the challenge against the judgment in R.C.A.No.10/2006 is repelled and the R.C.R is dismissed.

R.C.R.No.298/2007:

3. In this case, the tenant is occupying a portion of the room in the upstairs. The remaining portion is occupied by the 3rd respondent herein. He is running an S.T.D booth there. Since the income from the said business has dwindled, he would like to expand his business by doing D.T.P works etc. So, additional space is required. Therefore, the R.C.P was filed under Section 11(8) also, apart from the grounds under Sections 11(2)(b) and 11(4)(iii) of the Act. The Rent Controller as well as the appellate authority concurrently upheld the claim of the landlords. The learned counsel for the revision petitioner attempted to show that the above findings are illegal, improper and irregular and therefore, liable to be interfered with. Going by the appellate judgment, we notice that the appellate authority has

taken into account all relevant matters, adverted to the evidence on record and rightly found that the landlord concerned requires additional accommodation to expand his business. This being a finding of fact, we cannot interfere with the same under Section 20 of the Act. The finding under Section 11(4)(iii) in R.C.R. No. 297/2007 will govern this case also. Accordingly, this R.C.R fails and it is dismissed.

4. The learned counsel for the revision petitioner prayed for some time to vacate the premises concerned in these Rent Control Revisions. We heard the learned counsel for the caveators in these cases also. Having regard to the facts of the case, the revision petitioner is granted six months' time from today to vacate the tenanted premises, on condition he files an affidavit before the Rent Controller or the executing court, as the case may be, unconditionally undertaking to vacate the premises within six months from today and also agreeing to pay the arrears of rent if any, and the rent due from time to time, till the premises are given vacant possession. The

affidavit in this regard shall be filed within three weeks from today.

K.BALAKRISHNAN NAIR, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Nm/